BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4)(b), 11B and 11D of the Securities and Exchange Board of India Act, 1992 in respect of Mr. Vijay Kumar Gaba (PAN: AAIPG6905E).

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1. Securities and Exchange Board of India ("**SEBI**") received a complaint from Mr. Madan Mohan Sharma (hereinafter referred to as "**Sharma**") against Mr. Vijay Kumar Gaba (**"VKG"**) and M/s. Master Capital Services Limited (hereinafter referred to as "**MCSL**") alleging *inter alia* that VKG persuaded Sharma to invest in shares and securities and assured a return of 30% per annum. Sharma has also alleged that VKG and MCSL connived and cheated Sharma to the tune of ₹6.60 Crores.

2.1 SEBI vide letter dated October 31, 2014 advised VKG to furnish the para-wise comments to the complaint and sought the following information, viz. –

i. "PAN of VKG

ii. Bank statements of VKG for the years 2006 to 2010.

iii. Details of the clients with whom VKG had similar arrangement as in the case of the complainant.

iv. Details of fee charged by VKG.

v. Details of the various services provided by VKG.

vi. Any other relevant information."

2.2 The aforesaid letter was returned undelivered. On November 10, 2014, a copy of the said letter was also sent to the office and residential address of VKG. Subsequently, vide letter dated November 14, 2014, VKG was advised to provide the details of all the

transactions between VKG and Mr. Sharma and also provide suitable clarification about the moneys received from Mr. Sharma.

2.3 In response thereto, VKG vide letter dated November 19, 2014, replied to the above mentioned letters and denied all the allegations and submitted that "*the complaint made by Mr. Sharma is completely baseless, misleading, false and with mala fide intention.*" VKG also furnished the following documents:

i. Complaints dated February 22, 2011, May 10, 2011 and October 08, 2012 filed by VKG against Sharma before police stations in Mumbai and Delhi;
ii. Copy of post facto agreement dated December 10, 2010 between Sharma and VKG;
iii. Criminal complaint dated October 31, 2012 filed by VKG before the Court of Additional Metropolitan Magistrate, Tis Hazari, Delhi;
iv. Legal Notices dated September 21, 2007 and April 05, 2011 sent by Sharma;
v. Replies dated October 23, 2007 and May 06, 2011 sent by VKG to the Legal Notices;
vi. Bank statements and PAN.

3. On an examination of the material available on record such as complaint received by SEBI, correspondence exchanged between SEBI and VKG along with the documents contained therein, it is *prima facie* observed as under:

i. Shri Vijay Kumar Gaba(PAN: AAIPG6905E) is residing at A-90, Ram Datt Enclave, East Uttam Nagar, New Delhi - 110059.

ii. The main contents of the complaint filed by Sharma against VKG are reproduced below:

i. *" ...the trading member M/s Master Capital Services Ltd and one Vijay Kumar Gaba, both connived and cheated me to the tune of Rs.6.60 Crores in the name of share and securities.*

ii. *That one Sh. Vijay Gaba who claims to be a qualified Chartered accountant and expert in financial matter approached me at my Patna residence and requested to invest in shares and securities and will give me 30% return on the principal amount irrespective of the fluctuations of the market.*

iii. *That the said Vijay Kumar Gaba further represented that he is a sub broker of M/s Master Capital Services Ltd, a Trading Member who is a member of BSE and NSE, whose SEBI registration no. is INB/INF230643634 having registered office at CI/18/20 Jeevan Jyot Building, Cawasji, Patel Street Fort, Mumbai-400 001. Initially I was not interested and was hesitant in making investment, but due to his representation and categorical assurance of giving 30% return on the principal amount irrespective of the fluctuation of the market and saying that he and his trading member would be liable as he is taking my money, I handed over different cheques of total Rs. 5.85 crores from 01.07.2006 to 22.09.2006 drawn on Syndicate Bank, Khan Market, New Delhi to Vijay Kumar Gaba. I had not filled the name of the payee in the cheques, only signed.*

iv. *That thereafter, Mr. Vijay Gaba took various signatures on various blank forms and on query replied that these are just formality. He further took Rs. 1 Crore in the month of Oct 2007 which was also given through 2 cheques of Rs. 50 lakh each.*

v. *The undersigned has paid Rs. 3,15,000/- to Mr. Gaba in the first week of Oct 2006 as his fee through cheque.*

vi. *That on demand of 30% return as promised by Mr. Gaba, he started buying time and wrote me several letters & undertaking admitting his liability and promised to pay the amount. Ultimately on 10.12.2010 he executed a mutual agreement wherein he has again admitted his liability and promised to pay the amount in a time bound manner mentioned in the agreement."*

iii. The main features of the *Agreement* dated December 10, 2010 between Sharma and VKG are reproduced below:

1. *"That the First party* (Mr. Vijay Kumar Gaba) *claiming himself to be dealing in financial matters approached the Second party (*Mr. Madan Mohan Sharma*) in June 2006 at Patna and persuaded the Second party times without number to invest money which will pay handsome returns. Second party was reluctant to proceed in terms of the said offer but persistent request of the First party resulted in accepting the persuasions by Second party to the effect that First party agreed to give a minimum return of 30% (Thirty percent) per annum to the Second party without any fail irrespective of the market conditions.*
2. *That on July 1 to Oct 9, 2006 as agreed, the Second party handed over Rs.5.85 crores (Rupees five Crore Eight Five lakhs) to Master Capital Services Limited on the instruction of the first party.*
3. *As per the agreed terms, the First party agreed to give a return of 30% (Thirty percent) per annum beginning from the year 2007 to the Second party without any fail and without being influenced by market fluctuations.*
4. *The First party did not honour the said commitment and evaded payment of 30% (thirty percent) as well as return of the principal amount and started taking false and illusory promises.*
5. *In one of the meetings in October 2007, the First party requested to give Rs.1 crore (Rupees One Crore) more so that he may manage his affairs and give a return 100% (Hundred percent) in a period of three years (i.e. October 2007 to October 2010) on the amount received by him from the Second party The second party paid Rs.1 crore (Rupees One crore) by two cheques to First party in October 2007.*
6. *That the First party started evading meeting with Second party in December 2010 on the request of Second party to make the accounting and the payment, the First party did not pay the amount and agreed to pay the principal amount along with agreed return of 30% per annum from October 2006 within a reasonable time to the second party and first party will any how pay at least Rs.2 crores (Rupees Two crores only) within three months from execution of this agreement".*

iv. VKG vide letter dated November 19, 2014 in reply to the allegations made by Sharma stated the following:

a. *"...The complaint made by Mr. Sharma is completely baseless, misleading, false and with mala fide intention. Mr. Sharma had been harassing, intimidating and terrorizing me for extorting money for past four years. I have made complaints against him at police stations in Mumbai and Delhi. A series of criminal litigations have been initiated by him and me and matters are pending before various courts at Patna and Delhi.*

b. *I never executed any agreement to provide any service to him. The purported post facto agreement produced by Mr. Sharma which are allegedly signed by me are totally false, forged and fabricated. These documents are self contradictory. My signatures on page one of the document were taken on gun point at Delhi.*

c. *Mr. Sharma is no ordinary citizen and certainly not a novice investor as he is claiming to be. He is a powerful politician. He contested Bihar Assembly elections on BJP tickets in 1990 and 1995. I understand he has been a AMFI registered mutual fund advisor. Both his sons have also been AMFI registered advisors, vide ARN33033 and ARN13080. He had regular dealings with large institutions like ICICI Prudential AMC, HDFC Securities and ASK Wealth Advisors.*

d. *The allegation at point no. ii is totally false. I never visited Patna, never took any money from him for managing and never promised 30% returns to him as alleged. As you could see from the legal notice sent by Mr. Sharma, he himself has admitted to have approached me for availing services.*

e. *I did never represented myself as sub-broker of M/s Master Capital Services Limited to Mr. Sharma. In fact Mr. Sharma had already opened a trading and depository account with the said broker before he approached me for advisory service through one of the common acquaintance.*

f. *Mr. Sharma had paid a cheque of Rs.3,15,000 to me in September 2006 on gratuitous basis, as the service provided by me to him during July 2006 and mid September 2006 were on trial basis for which no agreement was made. I did never raise a bill on him. I did*

not bank the cheque for three weeks. However only after his insistence and claim that he has tremendously benefited from my services and feels obliged to pay, I banked the cheque in October 2006. **(Emphasis added)**

g. *I had no arrangement with Mr. Sharma whatsoever, I would like to categorically state that I did never provide any "Portfolio Management Services" or any fund based services in the nature of "Portfolio Management Services" to anyone. ...I used to provide market and investment related services to some broker/sub-broker and couple of corporate investors in Delhi. The services provided were mostly in the nature of macro strategy, technical and fundamental research, training and investor education. I did conduct a number of training sessions for brokers under the aegis of Delhi Stock Exchange. I did never provide any service to any individual, including Mr. Sharma, regarding investment in equity shares.*

h. *I usually charge fee on monthly retainer basis. It varied between Rs. 4,000 to Rs.10,000 per month".***(Emphasis added)**

v. In support of the contention at point no. d above, VKG submitted copy of a legal notice dated September 21, 2007 sent by Sharma which reads as under:
"*...that my client is a frequent visitor of Delhi for one reason or other and in course of his one such visit in the month of June, 2006 he expressed his willingness to one of his well wisher namely Mr. Ashok Kumar Jha regarding investment in equity market and related instruments through a reliable and professionally skilled person, upon which he suggested your name, to which my client agreed and both of them came to your office on 26.6.2006..."*

vi. It is noted that VKG filed a Criminal Complaint dated October 31, 2012 against Sharma before the Court of Additional Chief Metropolitan Magistrate(ACMM), Delhi and the Court issued summons to Sharma vide Order dated April 12, 2013. However, the said order was set aside by the Additional Sessions Judge (ASJ), Tis Hazari Court, Delhi.

4.1 While the rival claims and counter claims put forward by Sharma and VKG will have to be settled at appropriate legal fora, the question before me in the instant matter is whether VKG is offering portfolio management services to his clients without obtaining registration from SEBI as a portfolio manager.

4.2 It is *prima facie* observed from the admissions of VKG that Sharma had paid ₹3,15,000/- to VKG vide cheque number 761401 dated October 9, 2006 towards the services provided by VKG to Sharma between July 2006 and mid September 2006 on trial basis. As per VKG's own admissions vide letter dated November 19, 2014, he used to charge fees on monthly retainer basis varying between ₹4,000/- to ₹10,000/- (per month) for providing market and investment related services to a few of his clients in Delhi. Though VKG has contended that ₹3,15,000/- received from Sharma was on gratuitous basis, nevertheless, in the circumstances of the case there is indeed enough reason to believe that it was in consideration of some services rendered by VKG which, in the circumstances can be broadly described as portfolio management services.

4.3 Considering the abovementioned facts and circumstances and from the terms of the agreement, it is *prima facie* observed that VKG was providing securities market and investment related advisory services to his clients which tantamount to the services offered by a "portfolio manager", as defined in Regulation 2(cb) of the PMS Regulations.

4.4 Regulation 2(cb) of PMS Regulations reads as under:

'"portfolio manager" means any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or the funds of the client, as the case may be'.

4.5 Section 12(1) of the SEBI Act, 1992 reads, " *No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter,* ***portfolio manager,*** *investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of*

registration obtained from the Board in accordance with the regulations made under this Act:" Similarly, Regulation 3 of PMS Regulations also provides "*No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations*".

4.6 Furthermore, PMS Regulations envisage provisions for the protection of investors who avail the services of a registered portfolio manager. It also provides the framework and manner in which PMS activities are carried out. Chapter III of the PMS Regulations enumerates the general obligations and responsibilities of a registered portfolio manager such as *the portfolio manager shall abide by the Code of Conduct as specified in Schedule III*. Regulation 14 (1) (a) of PMS Regulations states "*The portfolio manager shall, before taking up an assignment of management of funds or portfolio of securities on behalf of a client, enter into an agreement in writing with such client clearly defining the inter se relationship, and setting out their mutual rights, liabilities and obligations relating to management of funds or portfolio of securities containing the details as specified in Schedule IV...*"

4.7 In this context, it is noted that VKG is not registered with SEBI in any capacity, either as portfolio manager or as a broker or a sub-broker affiliated to any broker. The characteristics and features of the business activity carried out by VKG as discussed in the preceding paragraphs *prima facie* lead to the conclusion that VKG is conducting himself as a portfolio manager and providing the services of portfolio management as defined in Regulation 2(cb) of the PMS Regulations. This is being done by VKG without obtaining the registration from SEBI in accordance with the provisions of PMS Regulations as described in the preceding paragraphs.

4.8 I find that these activities are in violation of various provisions of PMS Regulations and could put investors at great risk. Considering the facts and circumstances of the case, there is a likelihood that VKG may continue to carry out this business in contravention of PMS regulations, which may lead to his engaging with more investors in such a manner. Furthermore, in case of default by VKG in meeting his obligations to investors, the normal remedies available to investors while dealing with a SEBI registered

intermediary such as invoking the grievance redressal mechanisms, referring the matters to appropriate fora such as arbitration, etc. would not be available.

5. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it deems fit for fulfilling its legislative mandate enshrined in SEBI Act read with PMS Regulations for the purpose of investor protection. Therefore, steps have to be taken in the instant matter to prevent VKG from soliciting and collecting funds from investors and carrying on portfolio management services without due registration from SEBI. It becomes necessary for SEBI to take urgent preventive action. In light of the same, I find there is no other alternative but to take recourse through an *ad interim ex-parte order* against VKG for preventing him from collecting funds and offering portfolio management activities without obtaining registration from SEBI in accordance with the law.

6. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4)(b), 11B and 11D read with Section 19 of the SEBI Act hereby direct Shri Vijay Kumar Gaba(PAN: AAIPG6905E):

   a. *to cease and desist from acting as a portfolio manager and not to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any manner whatsoever;*
   b. *not to divert any funds raised from any of its existing clients/investors.*

7. The above directions shall take effect immediately and shall be in force until further orders. It is clarified that the prohibition on VKG shall not prevent him from making payments to the existing clients, if any, in accordance with the terms of the contracts already executed by him.

8. This Order is without prejudice to the right of SEBI to take any other action that may be initiated against VKG in accordance with law.

9. The *prima facie* observations contained in this Order are based on the material available on record In this context, VKG may, within 21 days from the date of receipt of this Order, file his reply, if any, to this Order and may also indicate whether he desires to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

Place: Mumbai **S. RAMAN**

Date: January 14, 2015 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA